IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.7.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMARAO
AND
THE HONOURABLE MR.JUSTICE S.PALANIVELU

Writ Appeals No.1699 and 1700 of 2001

Arumugam Pillai .. Appellant in both the W.As./
2nd Respondent

Vs.

1.Thiruvalluvar Transport
Corporation Ltd.,
Thiruvalluvar House,
Pallavan Salai,
Madras-600002,
rep.by its Managing Director

2.The Presiding Officer,
Industrial Tribunal,
Madras. ... Respondents/ Petitioner/
Ist Respondent

Writ Appeals preferred under Clause 15 of the Letters Patent, as against the common order dated 17.8.2000, respectively made in W.P.Nos.8158 and 8157 of 1993 by the learned single Judge of this Court

Prayer in W.P.Nos.8158 and 8157 of 1993:- Petition filed under Art 226 of Constitution of India praying for issuance of Writ of Certioari to call for the records and to quash the award dated 29.10.91 in complant NO.1/88; the order dated 29.10.91 in petition 44/88 respectively on the file of the Ist respondent Industrial Tribunal, Madras.

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For appellant : Mr.D.Hariparanthaman

For R.1 : Mr.Sanjay Mohan for
M/s.S.Ramasubramanim Associates

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COMMON JUDGMENT

ELIPE DHARMARAO, J.

The appellant was the Junior Engineer (Civil) in the first respondent Corporation. He was served with a charge memo. dated 10.4.1987 on the ground that himself, along with Driver K.Rajagopalan took a lorry from Marthandam depot on 18.3.1987 to Tirunelveli Depot and took 150 bags of cement and cement bags were unloaded in Tuticorin Depot, except about 10 bags and that he unloaded two cement bags near Eranial village for his personal use and that it was recorded in the Gate Register by Ponnappan, Security Guard, that there were eight bags of cement when the lorry entered Marthandam Depot.

2. Based on the said charge, a domestic enquiry was contemplated and since the Enquiry Officer held the appellant guilty of the charge, a punishment of dismissal from service was inflicted upon the appellant on 17.8.1987. Thereafter, the Management filed Approval Petition No.44 of 1988 before the second respondent Tribunal, seeking approval of their action of dismissing the appellant. The appellant also filed a complaint under Section 33-A of the Industrial Disputes Act, 1947, challenging the order of dismissal passed against him. Since the Tribunal allowed the complaint filed by the workman and dismissed the approval application filed by them, the Management filed W.P.Nos.8157 and 8158 of 1993 before this Court and since the learned single Judge has allowed both the writ petitions, setting aside the Awards passed by the Labour Court, the appellant/workman has preferred both these appeals.

3. We have heard the learned counsel for the appellant/workman and the learned counsel for the first respondent/Management.

4. The learned counsel for the appellant would argue that the first respondent Management has not complied with the mandatory requirements of Section 33(2)(b) of the Industrial Disputes Act while passing the order of dismissal against the appellant/workman and therefore, it would vitiate the entire proceedings initiated by the Management and therefore, the Tribunal is right in ordering the re-instatement of the appellant/workman with backwages and continuity of service, but the learned single Judge, without appreciating the facts and circumstances of the case in the manner required by law, has upset the findings of the Tribunal. The learned counsel for the appellant would, therefore, pray to allow the writ appeals, setting aside the findings of the learned single Judge.

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5. On the other hand, the learned counsel for the first respondent/Management would submit that when the Management has filed the Approval Application before the Tribunal and when it is pending before the Tribunal, well to the knowledge of the appellant/workman, the workman has subsequently filed his complaint, suppressing the fact that an approval petition was pending and the Tribunal first taking up the complaint for an enquiry, dismissed the approval application, which is violative of the well established principles of law. The learned counsel for the first respondent/Management would submit that the learned single Judge has considered all the aspects of the case in their proper perspective and has arrived at the right conclusion to allow the writ petitions filed by the Management, which needs only approval, not set aside, from the hands of this Court and would pray to dismiss both the writ appeals.

6. Admittedly, the Enquiry Officer was a retired Judicial First Class Magistrate and no allegations of violation of principles of natural justice or lack of opportunity have been made against the conduct of the enquiry. The learned counsel for the appellant would strenuously harp on the point that the first respondent/Management has violated the mandatory provisions of Section 33(2)(b) of the Industrial Disputes Act and hence the entire enquiry proceedings initiated by the first respondent/Management are null and void. In support of his contentions, the learned counsel for the appellant would cite the following judgments of the Apex Court:

1. M/s.FILMISTAN (P) LTD. vs. BALKRISHNA BHIWA AND ANOTHER [1971-II-LLJ335],
2. CALCUTTA STATE TRANSPORT CORPORATION vs. Md.NOOR ALAM [1973-II-LLJ 248] AND
3. JAIPUR ZILA SAHAKARI BHOOMI VIKAS BANK LTD. vs. RAM GOPAL SHARMA AND OTHERS.

7. There is no dispute regarding the propositions laid down by the Apex Court in the above judgments to the effect that the provisions of Section 33(2)(b) of the Industrial Disputes Act are mandatory in nature.

8. In the case on hand, the order of dismissal was passed against the appellant/workman by the first respondent/Management on 17.8.1987 and thereafter they have filed Approval Petition before the Labour Court, the papers of which were received by the Labour Court on 14.12.1987 and numbered as Approval petition No.44 of 1988. It is not in dispute that along with the order of dismissal, the first respondent/Management has paid one month's salary to the appellant, in compliance of Section 33(2)(b) of the Industrial Disputes Act. Subsequent to the filing of the Approval Petition, the appellant/workman has filed his complaint,

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without mentioning about the pendency of the approval petition filed by the Management, on 4.1.1988 and the same was taken on file as Complaint No.1 of 1988. In such circumstances, the Labour Court should have found that such a complaint would be maintainable only when the Approval Petition has not been filed for approval of the dismissal order passed against the workman, in which event, it would have confined its adjudication only to the question involved in the Approval Petition viz. as to whether the enquiry was conducted in accordance with the principles of natural justice and a prima facie view can be taken regarding the guilt of the employee. But, the Tribunal without taking up the Approval Petition, which had been filed earlier, has taken up the Complaint filed by the appellant/workman first for consideration and has dismissed the Approval Petition filed by the Management, as a consequence of the decision arrived at by it in the Complaint. Thus, the Tribunal has committed an error of law, which has been set right by the learned single Judge by allowing the writ petitions filed by the first respondent/Management.

9. When there is no dispute that the first respondent/Management has paid one month's salary to the workman along with the dismissal order, it cannot be said that the mandatory provisions of Section 33(2)(b) of the Industrial Disputes Act have not been complied with by the first respondent/Management. Every case has to be decided on its own merits. Since the first respondent/Management has paid the one month's salary along with the dismissal order to the appellant, the same cannot be equated with the judgments relied on by the learned counsel for the appellant wherein the Management has not paid the one month's wages to the workman along with their dismissal order. In this way, the judgments relied on by the learned counsel for the appellant are very well distinguishable from the facts of the cases on hand.

10. If the Tribunal had followed the procedure contemplated under the Act and the Rules, that is to say that if it had taken up the Approval Petition filed by the Management for consideration first, the zone of consideration would have been a different one and it would have held that there is no violation of principles of natural justice since the Enquiry Officer has followed all the procedure contemplated under law and on facts, has arrived at a conclusion that the appellant is guilty of the charges levelled against him, which were upset by the Tribunal on an illegal procedure followed it. Such an illegal finding of the Tribunal were correctly set aside by the learned single Judge.

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For all the above reasons, we see no reason to entertain these writ appeals and accordingly, they are dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

Rao

To

1. The Presiding Officer,
Industrial Tribunal,
Madras

2. The Managing Director
Thiruvalluvar transport Corporation
Pallavan Salai, Chenani.2.

1 cc to Mr.D. Hariparanthaman, Advocate, Sr. 45900
1 cc to Mr. Ramasubramaniam, Advocate, Sr. 45932

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